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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Bennett Laquan Williams,

10 Plaintiff,

11 v.

12 Betty Ulibarri, et al.,

13 Defendants.
14

No. CV-18-02274-PHX-MTL (DMF)

ORDER

15 Defendant Betty Ulibarri, an independent contractor paralegal for the Arizona
16 Department of Corrections, was served in this action but did not file an Answer; the Clerk
17 of Court entered default against her on February 10, 2020 (Doc. 44). Plaintiff seeks a
18 default judgment and Defendant Ulibarri moves to set aside the entry of default.

19 **I. Motion to Set Aside Default**

20 Defendant Ulibarri states that she has no excuse for not responding to the
21 Complaint but requests that default be set aside because Plaintiff's request for \$1,000,000
22 in damages would financially cripple her. She indicates she is ready to respond to the
23 Complaint and requests the opportunity to do so.

24 The Court may set aside an entry of default if good cause is shown. Fed. R. Civ.
25 P. 55(c). In determining whether good cause has been shown, the Court considers:
26 1) whether there was culpable conduct on the part of the defendant; 2) whether any
27 meritorious defenses are available, and 3) whether there is any prejudice to the plaintiff.
28 *United States v. Signed Personal Check No. 730 of Yubran S. Mesle ("Mesle")*, 615 F.3d

1 1085, 1091 (9th Cir. 2010). “[J]udgment by default is a drastic step appropriate only in
2 extreme circumstances; a case should, whenever possible, be decided on the merits.” *Id.*
3 at 1091.

4 **A. Culpable Conduct**

5 “A defendant’s conduct is culpable if he has received actual or constructive notice
6 of the filing of the action *and intentionally* failed to answer.” *Id.* at 1092 (citation
7 omitted) (emphasis in original). “[I]n this context the term ‘intentionally’ means that a
8 movant cannot be treated as culpable simply for having made a conscious choice not to
9 answer; rather, to treat a failure to answer as culpable, the movant must have acted with
10 bad faith, such as an intention to take advantage of the opposing party, interfere with
11 judicial decision making, or otherwise manipulate the legal process.” *Id.*

12 While Defendant Ulibarri does not elucidate what prevented her from filing a
13 timely answer, there is no basis in the record to conclude her failure was culpable. And
14 although Defendant Ulibarri received actual notice of the filing of the Complaint, the
15 Court is persuaded that her failure to answer was not intentional as used in this context.
16 Although Defendant Ulibarri’s conduct may not be ideal, her actions were not in “bad
17 faith [with] an intention to take advantage of the opposing party, interfere with judicial
18 decision making, or otherwise manipulate the legal process.” *Mesle*, 615 F.3d at 1091.
19 This factor, therefore, weighs in favor of setting aside default.

20 **B. Meritorious Defense**

21 Second, the Court considers whether Defendant has an available “meritorious
22 defense.” *See Mesle*, 615 F.3d at 1094. To establish that a meritorious defense exists,
23 Defendant must allege specific facts that would constitute a defense. *Id.* Defendant does
24 not articulate any particular facts in support of her defense, only that she requests the
25 opportunity to respond to the allegations against her. Although a defendant seeking to set
26 aside an entry of default must present specific facts supporting a defense, the burden on
27 the defendant is not extraordinarily heavy. *TCI Group Life Ins. Plan v. Knoebber*, 244
28 F.3d 691, 700 (9th Cir. 2001). While the Court expresses no view on the merits of

1 Plaintiff's claim, Defendant has alleged that she has a defense she wishes to present. As
2 such, this factor weighs in favor of setting aside default.

3 **C. Prejudice to the Plaintiff**

4 Lastly, the Court considers whether setting aside the entry of default would be
5 prejudicial to Plaintiff. "To be prejudicial, the setting aside of a judgment must result in
6 greater harm than simply delaying resolution of the case." *Id.* at 1095 (citation omitted).

7 Here, there is no showing of prejudice to Plaintiff. The delay has been minimal,
8 and no evidence suggests that Plaintiff's ability to pursue his claim will be hindered.
9 This factor, therefore, also weighs in favor of setting aside default.

10 Accordingly, Plaintiff's Motion for Default Judgment will be denied, Defendant's
11 Motion to Set Aside Entry of Default will be granted, and the entry of default will be set
12 aside.

13 **IT IS ORDERED:**

14 (1) The reference to the Magistrate Judge is withdrawn as to Plaintiff's Motion
15 for Default Judgment (Doc. 45) and Defendant's Motion to Set Aside Entry of Default
16 (Doc. 47).

17 (2) Plaintiff's Motion for Default Judgment (Doc. 45) is **denied**.

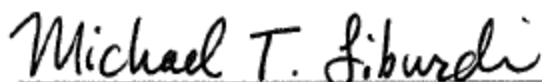
18 (3) Defendant's Motion to Set Aside Entry of Default (Doc. 47) is **granted**.

19 (4) The Clerk of the Court must **vacate** the Entry of Default (Doc. 44).

20 (5) Defendant Ulibarri must file her Answer within 14 days of this Order.

21 (6) The Clerk of Court must mail a copy of this Order to Defendant Ulibarri's
22 address listed on the Return of Service (Doc. 27).

23 Dated this 8th day of April, 2020.

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26 Michael T. Liburdi
27 United States District Judge
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